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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,092	07/11/2001	Vincent De Laforcade	05725.0945-00000	8085
22852	7590	07/01/2004	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			DOAN, ROBYN KIEU	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/902,092

Applicant(s)

DE LAFORCADE, VINCENT

Examiner

Robyn Doan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 040504.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 8, 19 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Morszeck.

With regard to claims 1, 4, 8, 19 and 22, Morszeck discloses a container inherently contains cosmetic product (fig. 6) comprising a base (3) and a cover (5) forming at least partially of foam (col. 6, lines 17-20), a hinge (22) connecting the base and the cover, at least one recess (36) forming within the foam material, a fabric (8) covering material covering at least the base, the cover and the hinge (fig. 6 and col. 4, lines 21-32). It is noted that all the claimed structures have been shown, the functionality (such as for containing a cosmetic composition) has given no patentable weight.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-5, 7-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skarne in view of Neckermann et al and Morszeck

With regard to claims 1-2, 4-5, 7-25, Skarne discloses a cosmetic compact (figs. 2-3) comprising a base (28) and a cover (26) forming at least partially of foam (col. 2, lines 1-12), a hinge (30) connecting the base and the cover and at least one recess (54) forming in the base and the recess containing a cosmetic composition or for removably holding a cosmetic applicator. In regard to claims 2, 5 and 17, Skarne shows the cosmetic substance containing within a tray (compartment 52), such the edges of the at least one recess contacting edges of the tray (fig. 3). In regard to claims 7 and 14, the hinge being integrally formed with the base and the cover and partially of foam (col. 2, lines 19-23). In regard to claim 10, the compact further having a mirror (22) and a recess (50) in the cover containing and surrounding edges of the mirror (fig. 3). In regard to claims 12-13, Skarne also shows the base and the cover having a portion of a fastener which is a snap (36) having a first portion being partially embedded within the cover and a second portion being partially embedded within the base (fig. 3). Skarne does not disclose a fabric covering material covering at least a portion of the foam core and defining an exterior surface of the cosmetic product, wherein the covering material comprises a material other than foam and the covering material being Lycra.

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Neckermann et al discloses a cosmetic container (fig. 3) having a decorative stitched exterior (fabric); the container further having a recess containing cosmetic composition (lipstick 34). Morszeck discloses a foam container as discussed above having a fabric covering on the outer surface. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the covering material as taught by Neckermann et al and Morszeck into the cosmetic compact of Skearne for the purpose of providing an aesthetic look.

Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skarne in view of Neckermann et al and Morszeck and further in view of Gueret.

With regard to claims 3 and 6, Skarne in view of Neckermann et al and Morszeck disclose a cosmetic compact comprising all the claimed limitations in claims 1 and 4 as discussed above except for the cosmetic composition being directly deposited in the at least one recess. Gueret discloses a cosmetic compact (fig. 2) comprising a base (5), a cover (2), the base having at least one recess (11c) wherein the cosmetic composition (8) being directly deposited in the recess. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to deposit the cosmetic composition directly in the recess as taught by Gueret into the compact of Skarne and Neckermann et al and Morszeck for the intended use purpose.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (703) 306-

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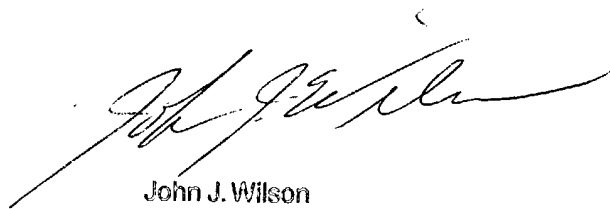
9182. The examiner can normally be reached on Mon-Fri 9:30-7:00; alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Kieu Doan
Examiner
June 28, 2004



John J. Wilson
Primary Examiner